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Section 30(2) of the Pharmacy Act, 1948, provides that the Provincial Government shall by the same or a like notification appoint a date on or before which the application for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal, "Prescribed" as defined in section 2(g) means in Chapter II prescribed by regulations made under section 18, and elsewhere prescribed by rules made under section 46. Section 30(2) occurs in Chapter IV. Consequently, the fee required to accompany the application under section 30(2) was required to be prescribed by rules made under section 46. However, without making any such rules prescribing the fee, Government issued a notification under section 30(2) that the applications for registration under the Pharmacy Act, 1948, should be made to the Registration Tribunal on or before the 15th March 1950 and the registration and renewal fees should be Rs. 5 and Rs. 3 per application respectively. Accordingly applications were submitted with the necessary fee prescribed by the notification. In his opinion No. 14472 dated the 11th September 1951, the Additional Secretary pointed out that in the absence of rules under section 46 prescribing the fees, the recovery of fee is irregular and the position should be regularised. Thereafter it appears that the L.S.G. &P.H.D. took up the question of framing rules and in the draft rules they have raised the fee from Rs. 5 to Rs.10 . The Additional Secretary in his opinion No. 488 dated the 14th January 1952 opined that since the required fee has been raised from Rs. 5 to Rs. 10, the persons who have paid Rs. 5 will have to pay Rs. 5 more to get their names enrolled in the Pharmacist

Register. The Chairman of the Pharmacy Registration Tribunal in his letter dated 14th May 1952 is of the view that the rules shall apply to subsequent registration under section 32 of the Act and, therefore, shall not affect the order passed under section 30(2) of the Act, and the applicants who have already paid Rs. 5 as registration fee under Government Resolution No. 6127/33 dated 29-7-43 need not, therefore, be forced to pay any more amount on that account. The L.S. G.& P.H.D. is inclined to agree to the proposal of the Chairman, Pharmacy Registration Tribunal, B.L.A. is requested to advise whether the applicants who have already paid Rs. 5 as fee can be forced to pay Rs. 5 more to entitle them to registration.

The difficulty has arisen because what was issued was a "notification" under section 30(2) laying down the registration and renewal fees as Rs. 5 and Rs. 3 per application respectively and not a "rule" in the strict sense of the term. However, under section 46 Government is given the power to make by a notification in the Official Gazette rules to carry out the purposes of Chapter III, IV and V. The Act does not prescribe any public notice of the draft rules nor does it lay down any special mode of making the rules except by notification in the Official Gazette. Section 30(2) also requires that the notification appointing the date on or before which the application for registration should be made published in the Official Gazette. If the applicants are now required to pay additional fee of Rs. 5 as prescribed under the rules, it would be possible to argue

that their applications made within the prescribed time under section 30(2) were not so made as they were not accompanied by the prescribed fee. Moreover, the applicants may also contend that they have already paid necessary fees as notified by Government under section 30(2) and were not liable to pay the additional fee. Besides, the rules which are now proposed to be made by Government raising the fee from Rs. 5 to Rs. 10, cannot be retrospective inasmuch as no subordinate legislation can be so made in the absence of any specific provision in the Act (see B.L.A.'s opinion accompanying the letter to the Legal Adviser, Bombay Port Trust, No. 12148 dated 21st December 1948). In these circumstances, it would be safer to construe the notification issued under section 30(2) as amounting to a rule prescribing the fee under section 46(Cf. B.L.A.'s opinion No. 2277 dated 10th April 1935).

Id/P.T.L. 23/8
Remembrancer of Legal Affairs.

U.O. to L.S.G.& P.H.D. No. 13968, dated the 27th August 1952.

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